

California Digital Library Response to the May 14th AAP Letter Opposing AB 609

May 23, 2013

AAP's claim: "State Universities Could be Faced with Open Access Publishing Charges Estimated at More Than \$1 Million Annually"

- ***Fact: AB609 has nothing to do with publishing charges. AAP's \$1 Million figure is not relevant to open access policies, open access publishing, or California's universities.***

There is absolutely no linkage between AB609 and open access publishing charges; to assert such a linkage is completely disingenuous on the part of AAP. On the contrary, as the AAP notes in its letter, AB609 does not require authors to publish in open access journals, whether fee-based or otherwise. Therefore California institutions need not incur any open access publishing charges in order to comply with the Bill. While articles published in open access journals would satisfy the requirements of AB609, the provisions of AB609 are designed precisely to enable taxpayer and researcher access to articles that are *not* funded by open access publication fees by allowing deposit of the author's final peer-reviewed manuscript. In the current language of the Bill, the author's peer-reviewed manuscript is the presumed version for deposit, with final published articles (including those published in open access journals) described merely as an acceptable alternative.

Moreover, the figures produced by AAP to argue for a \$1M impact on California's universities are completely specious. As Michael Eisen has pointed out in his blog (see <http://www.michael Eisen.org/blog/?p=1369>), the NIH testimony used as a basis for the \$1M figure predated NIH's own open access policy, so is irrelevant to an argument about the impact of an open access policy; indeed, the publication charges referred to in that testimony included routine charges borne by authors publishing in the very journals that AAP represents.

Nor do we need to build entirely new infrastructure in order to implement AB 609. The California Digital Library's eScholarship repository is already designed to accommodate deposit of author manuscripts; these capabilities are being enhanced to support the University's own open access policy, whose provisions are similar to those in AB609. Thus a scalable infrastructure is already in place at UC to provide open access to faculty-authored research publications, positioning us well to accommodate the requirements of AB609.

While existing publishing costs are unaffected by AB 609, publication in open access journals is a trend that is likely to grow at UC due to the evolving preferences of University of California authors, regardless of whether AB609 is passed. The UC Libraries are engaged in extensive modeling of open access publication costs and are motivated by institutional self-interest to carefully monitor and calibrate these costs and seek an appropriate balance of subscription and open access publication fees.

There are also many novel experiments in open access publishing today (such as PeerJ) that seek to significantly reduce the cost of publication. Policies like those embodied in AB609 create important incentives to make journals more affordable, whether funded through subscriptions or open access fees. Without these incentives, it is the runaway cost of the current scholarly publishing system that is unsustainable for taxpayer-funded academic and research institutions.

Therefore, while AB 609 does nothing to increase publication costs for California universities, it's entirely possible (and a hoped-for outcome) that the pressure to make research publicly accessible will help to lower the costs of scholarly publishing over the long term.

AAP's claim: "Savings to State Universities from Cancelled Journal Subscriptions Are Unlikely"

- ***Fact: AB609 does not impose any increased costs that need to be offset with cancellations.***

The AAP sets up a straw man by arguing that the increased costs it falsely posits above cannot be offset by savings in the form of journal cancellations. First, as noted above, there are no increased costs that need to be offset by subscription cancellations as a result of AB609. Furthermore, should grantees choose fee-based open access publication as an option, AB609 authorizes them to use grant funds for publication charges, avoiding any imposition of costs on the Universities.

UC agrees with the publishers that the Universities would have to continue most of their journal subscriptions under AB609, not solely to provide access to the articles of other authors, but in order to support the peer-review and publication process that is necessary for the implementation of AB609 itself (since AB609 mandates public access to "*any manuscript that is peer reviewed and accepted for publication in a scientific journal...*"). While there is a long-term trend away from subscription journals and toward direct open access publication, particularly in certain disciplines, this shift is likely to evolve over time without undue economic disruption.

In the meantime, it would be nonsensical to think that UC and other universities would cancel these journals as a direct result of AB609, particularly given a 12-month embargo on public access. However, cancellation savings are not needed to support AB 609 since the Bill does not impose any increased costs that need to be offset.

AAP's claim: "CA AB 609 Will Undermine Investments in the Peer Review Process that Ensures the Quality and Integrity of Scientific Research, Potentially Requiring California to Make Those Investments Itself"

- ***Fact: AB609 will not have a direct impact on journal subscriptions (see above) or other investment in publishing by California. It assumes the continuation of the peer review system.***

AAP's assertion that the peer review process will be undermined by AB609 directly contradicts their claim (stated above) that Universities won't be able to cancel subscriptions in light of the Bill. If subscriptions won't be canceled, and open access publication fees are also an option, there is no loss of publisher revenue to warrant decreased investment in peer review. Therefore AB609 should have no impact whatsoever on publishers' ability to support the peer review process as they do today. Publication will continue to be funded via either subscriptions or open access publication charges, both of which adequately support the current system of peer review.

Nonetheless, many research authors and other members of the academy believe that the current peer review system is ripe for reform —reforms that are impeded by the status quo. By mandating public access at the earliest possible point following publication, AB 609 provides additional incentives to all those involved in the scholarly communication system to rethink how peer review can be more efficiently and effectively conducted in the digital environment.

AAP's claim: "AB 609 Unjustly Takes High-Quality, Peer-Reviewed Final Publications Without Compensating Publishers for their Investments in Producing Them"

- ***Fact: AB609 mandates deposit of authors' peer-reviewed manuscripts, not publishers' final versions of articles.***

As has been clarified above, AB609 has absolutely no impact on publisher compensation. Publisher compensation happens at the point of subscription (for subscription-based journals) or publication (for

open access journals and articles) and this would not change. Moreover, the AAP appears to mis-read AB609 by asserting that the Bill “takes...final publications,” whereas the Bill actually mandates deposit of final peer-reviewed *manuscripts* (i.e. the version prepared by the author prior to final copy-editing and formatting by the publisher). Final publications can be substituted as an option where feasible (e.g. in cases where open access to the final publication has been paid for by article processing charges or otherwise been made available by the publisher). Successful examples abound. Many publishers in the life and biomedical sciences – including hundreds of journals published by Stanford’s HighWire Press – already make final articles available on an open access basis after one year with no adverse impact on their subscription revenue or publishing viability.

Moreover, the letter from AAP does not document any subsidiary post-publication revenue relied upon by publishers to sustain journal publication; this omission itself suggests that this revenue is not a substantial factor in contributing to publisher viability. Indeed, the largest scholarly publishers currently post operating margins in excess of 30% - 40%, a level of profit unheard of in most industries. The claims of imminent collapse by these publishers, the largest voices within the AAP, lack credibility to say the least.

AAP’s claim: “CA AB 609 Will Negatively Impact California Jobs”

➤ ***Fact: AB609 will benefit the California economy by broadening access to knowledge.***

An analogy with the newspaper industry is completely off the mark, as AB609 does not require any publisher to give content away for free. As noted above, publication will continue to be funded through either subscriptions or open access fees under AB609. Indeed, AB609 is intended to contribute significantly to the California economy and job growth by making research articles available, after embargo, to many more organizations, such as small entrepreneurial firms, public agencies, and other non-profits, all of whom are currently unable to benefit from the important research findings contained within these publications. This will generate new knowledge, lead to more informed public policy (even California legislators and policy analysts cannot get access to many of these articles!), and fuel innovation and product development.

AAP’s claim: “AB 609 Is Unnecessary Because Publishers Are Devoted to Providing Access to Research and Invest in the Dissemination of Research in a Variety of Ways”

➤ ***Fact: AB609 is necessary because publishers are resistant to providing access beyond the status quo.***

Our experience is that most publishers are very resistant to attempts to make journal content available to broader constituencies within California, even under the umbrella of existing institutional licenses. Many smaller organizations without a university affiliation cannot afford the means of access that publishers now make available. A recent study at the University of California to explore the potential for extending our licensing efforts to external communities confirmed both the inability of the small businesses, startups, and non-profits that we interviewed to pay standard licensing fees, as well as the lack of commitment on the part of many publishers to make broader access available at a reasonable incremental cost. While many publishers have responded positively to emergencies such as Hurricane Katrina and the Haiti earthquake, for which they should be applauded, it is only the pressure of public policy initiatives such as AB609 that has led publishers to develop the broader access programs recounted in the AAP's letter.